
Introduced by Senator SpeierFebruary 19, 2003

An act to amend Section 18533 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 285, as introduced, Speier. Income taxes: innocent spouse.

Existing income tax laws provide that an individual who made a joint return may elect to be relieved from liability for additional taxes and penalties if, among other things, that individual did not know of, and had no reason to know of, an understatement of tax attributable to erroneous items of the other individual filing the joint return.

This bill would provide a rebuttable presumption that, if an individual has been granted relief from specified joint and several liability provisions of federal income tax laws, that individual is also entitled to relief under California income tax laws.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 18533 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 18533. (a) (1) Notwithstanding subdivision (a) and the first
- 4 sentence of subdivision (b) of Section 19006:
- 5 (A) An individual who has made a joint return may elect to seek
- 6 relief under the procedures prescribed under subdivision (b), and
- 7 (B) If the individual is eligible to elect the application of
- 8 subdivision (c), the individual may, in addition to any election



1 under subparagraph (A), elect to limit the individual's liability for
2 any deficiency with respect to the joint return in the manner
3 prescribed under subdivision (c).

4 (2) Any determination under this section shall be made without
5 regard to community property laws.

6 (b) (1) Under procedures prescribed by the Franchise Tax
7 Board, if—

8 (A) A joint return has been made under this chapter for a
9 taxable year,

10 (B) On that return there is an understatement of tax
11 attributable to erroneous items of one individual filing the joint
12 return,

13 (C) The other individual filing the joint return establishes
14 that in signing the return he or she did not know of, and had no
15 reason to know of, that understatement,

16 (D) Taking into account all facts and circumstances, it is
17 inequitable to hold the other individual liable for the deficiency
18 in tax for that taxable year attributable to that understatement,
19 and

20 (E) The other individual elects (in the form and manner as
21 the Franchise Tax Board may prescribe) the benefits of this
22 subdivision not later than the date that is two years after the date
23 the Franchise Tax Board has begun collection activities with
24 respect to the individual making the election,
25 then the other individual shall be relieved of liability for tax
26 (including interest, penalties, and other amounts) for that taxable
27 year to the extent that the liability is attributable to that
28 understatement.

29 (2) If an individual who, but for subparagraph (C) of paragraph
30 (1), would be relieved of liability under paragraph (1), establishes
31 that in signing the return the individual did not know, and had no
32 reason to know, the extent of the understatement, then the
33 individual shall be relieved of liability for tax (including interest,
34 penalties, and other amounts) for that taxable year to the extent that
35 the liability is attributable to the portion of the understatement of
36 which that individual did not know and had no reason to know.

37 (3) For purposes of this subdivision, the term
38 "understatement" has the meaning given to that term by Section
39 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual's liability for any deficiency which is assessed with respect to the return shall not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) which is not allocable to the individual under subdivision (d), that election shall not apply to that deficiency (or portion). This subparagraph shall not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual

1 electing the application of this subdivision is liable (without regard
2 to this paragraph) shall be increased by the value of any
3 disqualified asset transferred to the individual.

4 (B) For purposes of this paragraph—

5 (i) The term “disqualified asset” means any property or right
6 to property transferred to an individual making the election under
7 this subdivision with respect to a joint return by the other
8 individual filing the joint return if the principal purpose of the
9 transfer was the avoidance of tax or payment of tax.

10 (ii) (I) For purposes of clause (i), except as provided in
11 subclause (II), any transfer that is made after the date that is one
12 year before the date on which the first notice of proposed
13 assessment under Article 3 (commencing with Section 19031) of
14 Chapter 4 is sent shall be presumed to have as its principal purpose
15 the avoidance of tax or payment of tax.

16 (II) Subclause (I) shall not apply to any transfer pursuant to a
17 decree of divorce or separate maintenance or a written instrument
18 incident to that decree or to any transfer that an individual
19 establishes did not have as its principal purpose the avoidance of
20 tax or payment of tax.

21 (d) For purpose of subdivision (c)—

22 (1) The portion of any deficiency on a joint return allocated to
23 an individual shall be the amount which bears the same ratio to the
24 deficiency as the net amount of items taken into account in
25 computing the deficiency and allocable to the individual under
26 paragraph (3) bears to the net amount of all items taken into
27 account in computing the deficiency.

28 (2) If a deficiency (or portion thereof) is attributable to—

29 (A) The disallowance of a credit, or

30 (B) Any tax (other than tax imposed by Section 17041 or
31 17062) required to be included with the joint return, and the item
32 is allocated to one individual under paragraph (3), that deficiency
33 (or portion) shall be allocated to that individual. Any item so
34 allocated shall not be taken into account under paragraph (1).

35 (3) For purposes of this subdivision—

36 (A) Except as provided in paragraphs (4) and (5), any item
37 giving rise to a deficiency on a joint return shall be allocated to
38 individuals filing the return in the same manner as it would have
39 been allocated if the individuals had filed separate returns for the
40 taxable year.



1 (B) Under rules prescribed by the Franchise Tax Board, an item
2 otherwise allocable to an individual under subparagraph (A) shall
3 be allocated to the other individual filing the joint return to the
4 extent the item gave rise to a tax benefit on the joint return to the
5 other individual.

6 (C) The Franchise Tax Board may provide for an allocation of
7 any item in a manner not prescribed by subparagraph (A) if the
8 Franchise Tax Board establishes that the allocation is appropriate
9 due to fraud of one or both individuals.

10 (4) If an item of deduction or credit is disallowed in its entirety
11 solely because a separate return is filed, the disallowance shall be
12 disregarded and the item shall be computed as if a joint return had
13 been filed and then allocated between the spouses appropriately.

14 (5) If the liability of a child of a taxpayer is included on a joint
15 return, that liability shall be disregarded in computing the separate
16 liability of either spouse and that liability shall be allocated
17 appropriately between the spouses.

18 (e) (1) In the case of an individual who elects to have
19 subdivision (b) or (c) apply—

20 (A) (i) The determination of the Franchise Tax Board as to
21 whether the liability is to be revised as to one individual filing the
22 joint return shall be made not less than 30 days after notification
23 of the other individual filing the joint return.

24 (ii) Any action taken under this section shall be treated as
25 though it were action on a protest taken under Section 19044 and
26 shall become final upon the expiration of 30 days from the date that
27 notice of the action is mailed to both individuals filing the joint
28 return, unless, within that 30-day period, the individual making the
29 election under subdivision (b) or (c) appeals the determination to
30 the board as provided in clause (iii) or the other individual filing
31 the joint return appeals the determination to the board as provided
32 in Section 19045.

33 (iii) The individual making the election under subdivision (b)
34 or (c) may appeal the determination of the Franchise Tax Board of
35 the appropriate relief available to the individual under this section
36 if that appeal is filed during the 30-day period prescribed in clause
37 (ii) and the appeal shall be treated as an appeal to the board under
38 Section 19045. Notwithstanding the preceding sentence, the
39 individual making the election under subdivision (b) or (c) may
40 appeal to the board at any time after the date which is six months



1 after the date the election is filed with the Franchise Tax Board and
2 before the close of the 30-day period prescribed in clause (ii).

3 (B) Except as otherwise provided in Section 19081 or 19082,
4 no levy or proceeding in court shall be made, begun, or prosecuted
5 against the individual making an election under subdivision (b) or
6 (c) for collection of any assessment to which the election relates
7 until the expiration of the 30-day period described in clause (ii) of
8 subparagraph (A), or, if an appeal to the board has been filed under
9 clause (iii) or Section 19045, until the decision of the board has
10 become final.

11 (2) The running of the period of limitations in Section 19371
12 on the collection of the assessment to which the petition under
13 subparagraph (A) of paragraph (1) relates shall be suspended for
14 the period during which the Franchise Tax Board is prohibited by
15 subparagraph (B) of paragraph (1) from collecting by levy or a
16 proceeding in court and for 60 days thereafter.

17 (3) (A) Except as provided in subparagraph (B),
18 notwithstanding any other law or rule of law (other than Article 6
19 commencing with Section 19441) of Chapter 6, a credit or refund
20 shall be allowed or made to the extent attributable to the
21 application of this section.

22 (B) In the case of any election under subdivision (b) or (c), if
23 a decision of the board in any prior proceeding for the same taxable
24 year has become final, that decision shall be conclusive except
25 with respect to the qualification of the individual for relief which
26 was not an issue in that proceeding. The exception contained in the
27 preceding sentence shall not apply if the board determines that the
28 individual participated meaningfully in the prior proceeding.

29 (f) Under procedures prescribed by the Franchise Tax Board,
30 if taking into account all the facts and circumstances, it is
31 inequitable to hold the individual liable for any unpaid tax or any
32 deficiency (or any portion of either), and relief is not available to
33 the individual under subdivision (b) or (c), the Franchise Tax
34 Board may relieve the individual of that liability.

35 (g) (1) The Franchise Tax Board may prescribe regulations
36 providing methods for allocation of items other than the methods
37 under paragraph (3) of subdivision (d).

38 (2) It is the intent of the Legislature that, in construing this
39 section and any other sections which are specifically
40 cross-referenced in this section, any regulations that may be

1 promulgated by the Secretary of the Treasury under Section 6015
2 of the Internal Revenue Code, as amended by Public Law 105-206,
3 shall apply to the extent that those regulations do not conflict with
4 this section or with any regulations that may be promulgated by the
5 Franchise Tax Board.

6 (h) (1) Except as provided in paragraph (2), the amendments
7 made by the act adding this subdivision shall apply to any liability
8 for tax arising after the effective date of the act adding this
9 subdivision and any liability for tax arising on or before that date
10 but remaining unpaid as of that date.

11 (2) The four-year period under subparagraph (E) of paragraph
12 (1) of subdivision (b) or subparagraph (B) of paragraph (3) of
13 subdivision (c) shall not expire before the date which is four years
14 after the date of the first collection activity after the effective date
15 of the act adding this subdivision.

16 (i) *Notwithstanding any other law, if an individual who made*
17 *a joint return has been granted relief under Section 6015 of the*
18 *Internal Revenue Code, relating to joint and several liability on a*
19 *joint return, it is rebuttably presumed that individual is also*
20 *entitled to relief from taxes and penalties under this section.*

